IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3477 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RATILAL K PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR DIPAK R DAVE for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR DC DAVE for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/08/2006

ORAL JUDGMENT

1. The petitioner herein a retired teacher seeks pensionary benefits from the respondents. Short

facts leading to the present petition are as follows :

1.1 The petitioner joined the service of respondent no.3 Gujarat Vidyapith on the post of Teacher/Sevak on 17-6-1963. At the relevant time admittedly, the petitioner was covered under the Provident Fund Scheme.

1.2 It is the case of the petitioner that a Pension Scheme was introduced for teachers by resolution dated 17-11-1986. Existing teachers were required to give an option whether to switch over to the Pension Scheme or to continue to be governed by the Provident Fund Scheme. The petitioner exercised his option for being covered by the Pension Scheme vide his letter dated 23-3-1987. The petitioner retired on superannuation with effect from 5-5-1995. On 1-6-1995, the petitioner requested the respondent no.3 to pay him the pensionary benefits. Since the petitioner did not receive such benefits, he made subsequent representations also. Instead of

paying pension, the petitioner was paid gratuity and Provident Fund including Employer's Contribution. Eventually, the petitioner filed this petition in the year 1999 and made following prayers :

> “9.(A) Your Lordships may be pleased to issue a writ of mandamus, or any other writ or order or direction, directing to the respondent No.3 to grant the pension scheme and gratuity as per the request of the petitioner dtd. 23-3-87 and as per the circular of the respondent No.3 dtd. 17-11-86 and 19-12-86.
>
> (B) Pending admission, hearing and final disposal of this petition, Your Lordship may be please to direct the respondents to grant the benefit of Pension Scheme and Gratuity to the petitioner, as per circular dtd. 17-11-86 and 19-12-86.
>
> (C) Grant any other and further relief/s which is deemed fit and proper in the interest of justice.”

1.3 Broadly stated, the case of the petitioner is that he was covered under the Pension Scheme made applicable vide Government Resolution dated 17-11-1986. He had also opted for pension. He therefore, ought to have been paid the pensionary benefits upon retirement.

2. The case of respondent no.3 as stated in

affidavit in reply is that the petitioner was employed in the Primary Section of the Gujarat Vidyapith. The Government has not approved a Pension Scheme for the teachers of Primary Section and the petitioner was therefore, not covered by the Pension Scheme.

3. Learned advocate Shri D.R. Dave appearing for the petitioner contended that the petitioner is entitled to receive pension; that the petitioner had put in sufficient number of years of service before his retirement. The Pension Scheme was made applicable by Government Resolution dated 17-11-1986. The petitioner had in fact opted for being covered under the Pension Scheme. Option of the petitioner was never rejected. He therefore, should have been covered by the Pension Scheme.

3.1 Learned advocate further submitted that the petitioner was employed by respondent no.3 Gujarat Vidyapith. He was discharging his duties in one of the institutions run by the said

Vidyapith and there was no demarcation such as Primary or Secondary Section and the respondents therefore, cannot deny the pensionary benefits to the petitioner. Reliance was placed on the decision of learned Single Judge of this Court in the case of Gujarat State Khadi Gramodyog Board Pensioners Association v. Gujarat State Khadi Gramodyog Board reported in 2004(1) GLR 116, wherein learned Single Judge was pleased to strike down the cut off date for application of liberalised pension. It was observed that shortage of funds would not prevent the Court form giving directions when fundamental rights are breached. Reliance was also placed on the Division Bench decision of this Court in the case of State of Gujarat v. Kusumben E. Borasada reported in 2001(3) GLH 659, wherein the Bench found that there was no basis for keeping Primary teachers of grant in aid schools within the purview of the Pension Scheme when Secondary And Higher Secondary School teachers are receiving such benefits from the Government.

4. On the other hand, learned advocate Shri D.C. Dave appearing for respondent no.3 submitted that the respondent no.3 had corresponded with the Government. However, Government clarified that for the Primary teachers, Pension Scheme is not applicable.

5. Learned AGP Shri Siraj Gori also opposed the petition and stated that the petitioner is not entitled to receive pension.

6. Though learned advocate for the petitioner contended that there is no clear demarcation such as Primary or Secondary Section of various institutions run by respondent no.2, it is virtually an undisputed fact that the petitioner discharged his duties in the Primary Section through out his service carrier. It is also not in dispute that at the relevant time when the petitioner retired, there was no Pension Scheme applicable to the Primary teachers. It is also not in dispute that the petitioner did receive his Provident Fund including the Employer's

Contribution thereof after his retirement. Nothing on record has been placed to suggest that he received such amounts under protest.

7. The situation that emerges therefore is that the petitioner who had discharged his duties as teacher upon retirement was paid full CPF benefits which he accepted without protest. Few years thereafter, he filed the petition claiming the pensionary benefits. It is true that immediately upon his retirement,the petitioner had made representations to the respondents seeking pensionary benefits. However, when it is found that no Pension Scheme is applicable in his case, it would not be possible to grant the pensionary benefits to the petitioner.

8. It is true that the petitioner did exercise an option for switching over to Pension Scheme pursuant to Government Resolution dated 17-11-1986. However, this option was neither accepted nor rejected by the Employer. May be at the relevant time, respondent no.3 itself was under

some bona fide doubt about the applicability of the Pension Scheme to the petitioner and other similarly situated teachers. These aspects of the matter were sufficiently clear when the Government conveyed to the respondent no.3 that for Primary Teachers Pension Scheme is not applicable.

9. Considering all these aspects of the matter, claim of the petitioner seeking pension cannot be accepted. It may be noted that by virtue of judgement of this Court in the case of State of Gujarat v. Kusumben E. Borasada(supra) the Government has implemented Pension Scheme for Primary teachers with effect from 1997. However, prior to the said date, no Pension Scheme was available for the Primary teachers.

10. Considering all these aspects of the matter, I do not find that the petitioner can claim Pension. Petition is therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)